

Meeting Attendees	
Name	Organization
Doug Nelson (Co-Chair)	Missouri Office of Administration
Alesha Adamson	TX Health Services Authority
Scotty Allen	DSS/DLS
Lorey Barnes	Molina Healthcare of Missouri
Kathleen M. Berchermann	St. Louis Children's Hospital
Mark Cone	N-Tegrity Solutions
Adriane Crouse	MO Senate
Anne Curchin	Missouri Hospital Association
David Durbin	SSM Health Care - St. Louis
Don Fowls	Infocrossing Healthcare Services
Laurel Green	Metropolitan Community College of Kansas City
Scott Gronowski	BJC HealthCare
Kack Haslag	Sen. Schmitt's Office
Susan Hinck	Missouri Health Advocacy Alliance
Sharon Hoffarth	Primaris
Amy Hoyt	UMC - Center for Health Policy
Ila Irwin	Cura Advantage
Joy Jacobsen	CareEntrust
Pam Jodock	Anthem
Charlotte Krebs	Primaris
Jessica Land	Patek & Assoc.
Melissa Manda	Missouri Coalition of Community Mental Health Centers
Brian Martin	Infocrossing Healthcare Services
Ian McCaslin	MO HealthNet
Jeff McGraw	Bothwell Regional Health Center
Becky Miller	Missouri Center for Patient Safety
Ebrahim Moshiri	Object Computing, Inc.
David Renfro	Availity, LLC
William Shoehigh	Microsoft and Dell
Gerald Sill	Missouri Hospital Association
Malcolm Spence	Object Computing, Inc.
Jennifer Stilabower	Department of Health and Senior Services
Ted Suess	Infocrossing Healthcare Services
Pam Victor	HealthCare USA
Staff	
Laurie Hines	Missouri Department of Health and Senior Services
Melinda Dutton	Manatt Health Solutions
Helen Pfister	Manatt Health Solutions
Alice Lam	Manatt Health Solutions

Next Meeting	<p>Tuesday, December 15, 11:00 AM – 1:00 PM Jefferson Building (205 Jefferson St., Jefferson City, MO) 10th floor, Conference Room B</p>
Action Items	<p><i>The Legal and Policy Workgroup will meet bi-weekly in Jefferson City. In-person attendance is strongly recommended.</i></p> <p>Please contact Workgroup staff (contact information below) with questions about the Workgroup framework, process, or timeline.</p> <ul style="list-style-type: none"> ➤ Workgroup participants to provide feedback to kwallis@manatt.com by 12/9. Alternatively, Workgroup can submit feedback through survey on State website: dss.missouri.gov/hie. ➤ Workgroup participants to send suggestions of additional stakeholders to ckrebs@primaris.org. ➤ Workgroup staff to solidify mechanism for Workgroup information distribution and discussion as well as coordination between other Workgroups. ➤ Workgroup staff to circulate HSPC analysis of MO state law. ➤ Workgroup staff to develop straw man outline of Legal and Policy content in Strategic Plan based on feedback.
Content Reviewed	<p>➤ <i>HIE and HITECH Opportunities Overview</i></p> <ul style="list-style-type: none"> ○ Definitions: Health information exchange (HIE); Regional health information organization (RHIO); Health information organization (HIO); Electronic medical record (EMR); Electronic health record (EHR); Personal health record (PHR) ○ Opportunities: Medicare and Medicaid payment incentives for health information technology (IT) adoption; appropriations for HIE development; appropriations for health IT (regional centers); broadband and telehealth; workforce development; beacon communities ○ Meaningful use: Providers can draw down incentives by using certified EHR technology in a meaningful manner, including: electronic prescribing, electronic exchange of health information, and reporting on clinical quality measures ○ Missouri's projected meaningful use and HIE stimulus funding: <ul style="list-style-type: none"> ▪ State HIE Program: \$13.8M ▪ Medicare meaningful use: \$442M ▪ Medicaid meaningful use: \$404M ○ Missouri is a state without a strategic or operational plan; Missouri submitted an application for planning funding to develop a strategic and operational plan in 2010 ○ States across the country are taking different approaches to HIE (e.g. Idaho, Indiana, New York) <p>➤ <i>Project Overview</i></p> <ul style="list-style-type: none"> ○ Workgroup Framework – The Workgroups will provide recommendations for review and consideration of the Advisory Board. The six Workgroups are interrelated; issues and recommendations will need to be coordinated and vetted across Workgroups. ○ Project Timeline ○ Strategic Plan Requirements <p>➤ <i>Legal and Policy Considerations & Key Questions</i></p>

Materials are available online at <http://www.dss.mo.gov/hie/index.shtml>

<p>Key Commentary & Discussion</p>	<ul style="list-style-type: none"> ○ What work has been done to date to understand Missouri privacy and security policies relative to health information exchange? <ul style="list-style-type: none"> ▪ How may that work be leveraged? ○ What are the gaps and how will additional work be accomplished? ○ What should the role of the State be in developing statewide privacy and security policy guidance? ○ What should the process be for developing comprehensive statewide policy guidance with respect to privacy and security issues? ○ What level of agreement exists on the core issues that must be addressed to ensure privacy and security of health information in the context of statewide HIE? ○ How should Missouri ensure adherence to the legal, business, and technical rules developed through the statewide process? ○ How will the state pursue harmonizing policies with neighboring states to enable interstate HIE? <p>➤ Workgroup leadership opened the meeting by discussing the Legal and Policy Workgroup's role in developing a statewide policy framework to facilitate HIE, coordinated with Federal policies, and provide oversight mechanisms.</p> <p>➤ Workgroup leadership encouraged wide participation by interested parties in this open process.</p> <ul style="list-style-type: none"> ○ Broad involvement will bring a variety of perspectives to develop consensus and gain buy-in. ○ The State HIE planning process and all workgroup meetings are covered pursuant to MO Sunshine Law. <p><i>State Role</i></p> <p>➤ The State's role can be viewed on a continuum – from following existing State and Federal laws to providing guidance, setting policy and enforcing actions.</p> <p>➤ Workgroup staff discussed the statewide policy guidance configuration and framework in New York – New York e-Health Collaborative – which is a public-private entity that facilitates state-approved guidance.</p> <ul style="list-style-type: none"> ○ Workgroup participants expressed interest in this model and noted the need for coordination with the Governance workgroup to develop a public-private structure. <p><i>Existing Work</i></p> <p>➤ The Workgroup agreed that understanding current Missouri laws governing health information is a critical first step. Previous work may be leveraged.</p> <ul style="list-style-type: none"> ○ Under the Health Information Security and Privacy Collaboration (HISPC) – a multi-state initiative to address security and privacy concerns funded by the Federal government – the MO Hospital Association conducted pre-emption analysis that compared MO statute with HIPAA. <ul style="list-style-type: none"> ▪ A report was produced outlining recommendations of areas to be addressed. ▪ The analysis allowed for comparison of MO law with other states participating in HISPC (posted at www.mosecure4health.org) ▪ This information needs to be updated to address the significant changes in Federal law that have occurred and the gaps in patient consent information. The Workgroup agreed to take this
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recommendation back to the Advisory Board to move this task forward.

- A general operating assumption that State laws will remain static was discussed by the Workgroup, since seeking law changes would require additional considerations and time that may not be able to be accommodated under the current timeline.
 - However, it was also noted that MO case law may restrict the use of contracts to establish certain framework elements (as has been the practice in other states) and legislative or administrative action may be required.
- The Workgroup expressed interest in leveraging existing work, learnings from other States and the RWJ/Markle initiative, "Connecting for Health Framework" to move forward.

Policy Framework Development Scope and Process

- Workgroup leadership noted that the policy development process will extend beyond the submission of the Strategic and Operational Plans and actual implementation of the Operational Plan.
- Understanding the technical architecture of the HIE will be critical in informing policy development.
 - Questions were raised as to whether the privacy and security policies discussed in the Legal and Policy workgroup address data at motion or data at rest and whether the HIE operates on a federated model or a central data repository.
 - The scope will depend on whether the State opts for a federated versus centralized model. Workgroup participants discussed the current level of HIE and indicated that while MO has RHIOs very few are currently operational.
 - The Legal and Policy Workgroup will be coordinated with the Governance and Technical workgroups.
- A workgroup participant also recommended that the policy framework address dispute resolution between participant, providers, payors and HIE organizations.
- Trust is critical and privacy and security rules cannot be developed in a vacuum.
- Workgroup staff noted that transitioning from a one-to-one relationship to a many-to-many relationship in the exchange of health information raises privacy and security concerns.
 - Consent is a particularly critical issue and considerations include:
 - What level of consent is required from the patient to access information?
 - What will be the allowable uses of this information?
 - Who will be able to access this information?
- One workgroup participant cautioned that privacy and security not be used as a justification for a lack of exchange.
- Workgroup noted that the legal and policy requirements are on the critical path for providers to access EHR adoption incentives and acknowledged the need to assure that any lack of legal and policy requirements does not restrict MO providers from accessing incentives.
 - It was suggested that legal and policy requirements first focus on a manageable set of information that can be addressed in a timely manner and then phase-in more difficult issues.

Key Decisions	<ul style="list-style-type: none"> ➤ The Workgroup participants highlighted concerns and considerations from their constituencies: <ul style="list-style-type: none"> ○ Assuring protection from liability for providers; ○ Assuring the number of consents that will be required of consumers is not unwieldy; ○ Addressing payor access to data; ○ Facilitating exchange in different regions of the state and addressing cross-state issues due to the large population centers being near state borders.
	<ul style="list-style-type: none"> ➤ Interest and support in a public-private structure for the statewide policy entity. ➤ Understanding current Missouri laws governing health information is a critical first step and the previous HISPC works needs to be updated. Workgroup will make this recommendation to the Advisory Board to move the task forward. ➤ State laws will be considered static for the immediate term.
	<ul style="list-style-type: none"> ➤ What issues are raised from review of the legal analysis conducted under HISPC? ➤ How will the statewide policy entity be structured? ➤ What will be the critical set of issues (information, populations) that will be prioritized in initial policy guidance? ➤ Review outline of Strategic Plan.
Next Meeting	
Workgroup Staff Contact Information	<ul style="list-style-type: none"> ➤ Laurie Hines - Laurie.Hines@dhss.mo.gov ➤ Melinda Dutton – mdutton@manatt.com ➤ Helen Pfister – hpfister@manatt.com ➤ Alice Lam – alam@manatt.com